IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

WRIT PETITION NO.2952 OF 2000

1) Arjun Vasant Rane)
Aged 36 years, Occup. Service)
Indian Inhabitant of Mumbai)
residing at 2/139, Safalya)
Curry Road, West, Mumbai 13.)

2) Tukaram Keshav Chogale)
Aged 40 years, Occup. Service)
Indian Inhabitant of Mumbai)
residing at Katawadipada, Patil)
Chawl, Saipan Chouki, Paip Line)
Barvenagar, Ghatkopar (W))
Mumbai 84.)

3) Sou.Veena Vasudeo Savant)
Aged 43 years, Occup. Service)
Indian Inhabitant of Mumbai)
residing at Jangalmangal Road)
Bhandup (W), Mumbai 400 078.)

4) Bhagwan Mahadeo Salve)
Aged 39 years, Occup. Service)
Indian Inhabitant of Mumbai)
residing at Flat No.245, Lumbini)
Baug, Govandi, Mumbai 400 043.).. Petitioners

Versus

1) The Secretary to the Govt. of)
Maharashtra, Higher & Technical)
Education Department, Mantralay)
Mumbai 400 032.)

2) The State of Maharashtra).. Respondents

Mr.L.N.Acharya for the Petitioners.

Mr.A.P.Vanarse, A.G.P., for the Respondents.

CORAM : H.L. GOKHALE AND
SMT.NISHITA MHATRE, JJ.

DATE : 07TH SEPTEMBER 2004

ORAL JUDGMENT : (PER GOKHALE, J.)

1. This Writ Petition filed by four employees of

the Higher and Technical Education Department of the State Government, principally seeks regularisation of their services from the date they were initially taken in the service of the State Government. The Petitioners prior to their joining in the State Government, worked as Coders under the Directorate of Census Operations which is a Department of the Central Government. That was in the year 1980-81 onwards and that was for various periods ranging from one year and seven to ten months in the case of the first Petitioner and three years and ten months in the case of the fourth Petitioner. They were subsequently relieved from the particular assignment given to them under the Census Operations with effect from 31st January 1984 by virtue of the order issued by the Directorate of Census Operations on that date. The relieving order stated that the appointment was terminated because of the reduction in establishment which resulted on completion of the work in connection with which the appointments were made.

2. In view of the representations of the employees, the State Government took a compassionate view and sometimes in the year 1984 all these four Petitioners were taken in the employment in the Education and Employment Department. The dates of joining of the four Petitioners were issued on 17th July 1984, 21st May 1984, 29th November 1985 and 16th July 1984. The appointment orders issued by the State Government stated that they were appointed as Clerks on a purely temporary

basis until further orders. One such appointment order issued to the second Petitioner dated 21st May 1984 is annexed at Exhibit "C" to the Petition. The Petitioners have continued to serve in this Department thereafter regularly and without any break. It is their submission that their services are not different from the other employees and for that purpose it is emphasised that (i) they were all posted on regular vacancies; (ii) they were all given the benefits of regular employees and (iii) there was no outer date provided in their appointment orders that their services were to be engaged until a particular date. It is, therefore, their submission that they took that they have been engaged on a regular basis.

3. In view of the representations of the Association of the employees and in view of the various orders of the High Court and the Supreme Court, the State Government came out with a Resolution on 1st December 1994 to deal with such employees. This Resolution in paragraph 5 stated that these employees who have not been appointed through regular channel and who have been engaged on temporary basis, their initial date of joining being during the period 17th June 1983 to 10th January 1990, will be deemed to be in regular service of the State Government with effect from the date of the Government Resolution. That will be provided they satisfy the three conditions mentioned in clause 5 of the Government Resolution viz., (i) they

have the necessary educational qualifications and they also fall within the requisite age limit; (ii) they fulfil the necessary requirement with respect to the norms meant for reserved categories if the person belong to such categories and (iii) their service record is satisfactory.

4. It is the case of the Petitioners that inasmuch as they have been thus regularised with effect from this Government Resolution i.e. from 1st December 1994, a wrong has been done to them and that they ought to have been regularised with effect from their initial dates of absorption in the year 1984. As stated above, for that purpose their submission is the same namely (i) that they were occupying regular vacancies, (ii) they were receiving all the benefits and increments as given to the regular employees and (iii) there was no outer date provided in their appointment orders that their appointments were to continue until a particular date. Inasmuch as they were not satisfied with this decision of the State Government, they filed an application before the Maharashtra Administrative Tribunal and the Tribunal decided the application No.O.A.29 of 1997 by its judgment and order dated 1st April 1999 whereby the Tribunal declined to accept these submissions advanced on behalf of the Petitioners. The Tribunal noted the rationale behind the Government Resolution dated 1st December 1994 providing for regularisation from the date of the Government Resolution. The Tribunal observed in

its judgment that the Petitioners had not come through the regular channel. They were neither persons selected by the Public Service Commission nor had they come from the Selection Board. In the meanwhile, there were many others who had come through the regular channel. Granting regularisation to these employees with effect from their initial date of joining sometimes in the year 1984 will give them a seniority over the persons who have in the meanwhile come through the regular channel. The Tribunal therefore dismissed the Original Application that was filed on behalf of the Petitioners.

5. The Petitioners have therefore filed this Writ Petition challenging this judgment and order of the Tribunal. Prayer (a) of this Petition seeks an order to set aside the order issued by the State Government declining to grant the seniority from a prior date. That decision of the State Government dated 22nd August 1996 in terms states that the appointments have been regularised with effect from 1st December 1994 in view of the Government Resolution of the same date and the request of a seniority from the date of initial joining was rejected.

6. Mr.Acharya, learned Counsel for the Petitioner, made the same submissions before this Court contending that these employees were situated similar to the other employees and thus there was a kind of discrimination against them and therefore if the spirit of Article 14

of the Constitution of India is to be kept in mind, they ought to be given regularisation from the initial date of joining i.e. sometimes in the year 1984. He relied on the judgment of the Apex Court in the case of *Direct Recruit Class II Engineering Officers' Association* vs. *State of Maharashtra and others* reported in **(1990) 2 SCC 715** and particularly paragraph 13 thereof. We have gone through the judgment and the particular paragraph which is pressed into service. The Apex Court in this particular paragraph states that if an appointment is made by way of stopgap arrangement without considering the claims of all the eligible available persons and without following rules of appointment, the experience of such appointee cannot be equated with the experience of a regular appointee. It in terms states that to equate the two would be to treat unequals as equals. Thus, these observations in fact do not help the Petitioners. Later on in the same paragraph however it is stated that if the appointment is made after considering the norms of all eligible candidates and the appointee continue in the post uninterrupted till regularisation, there is no reason to exclude officiating service for the purpose of seniority. Mr.Acharya has pressed this later part into service. However, as we have noted earlier, the Petitioners are not persons who have come through the regular channel. In the meanwhile, admittedly large number of persons have been selected through regular channel and they cannot be made to suffer by giving seniority to the

present Petitioners over such persons.

7. In *Registrar General of India and another* vs. *V.Thippa Setty and others* reported in **(1998) 8 SCC 690**, the Apex Court has in terms said that regularisation should ordinarily be prospective so that the seniority of those who are already in regular service is not affected. The proposition holds good in the present case as well. In the circumstances, we do not find any error on the part of the Administrative Tribunal in arriving at the conclusion that it has in rejecting the Original Application which the Petitioners had filed. In the circumstances, there is no reason to entertain this Petition. The Petition stands rejected.

8. Although we are rejecting this Petition, Mr.Acharya, learned Counsel for the Petitioners, drew our attention to the averments in paragraph 23 of the Petition which are based on a subsequent Government Resolution of the State Government dated 24th February 1999. He submitted that this Government Resolution which gives the higher pay scales to certain employees includes some employees who are situated similar to the Petitioners. On this basis, a separate prayer; is made which is prayer (d) praying that Respondent Nos.1 and 2 be directed to grant higher pay scale to the Petitioners. However, we must note that this Government Resolution was issued subsequent to the filing of the proceedings in the Administrative Tribunal and has not

found a part of the decision of the Administrative Tribunal. Besides a specific foundation that these particular employees are such persons who are given higher pay scales on the basis of this Government Resolution and that they are situated similarly to the Petitioners is not specifically laid in the present Petition. It would be, therefore, appropriate for the Petitioners, if they so deem it fit, to file a separate Original Application to the Tribunal raising this plea and on that basis raise a prayer similar to the one which is raised in prayer clause (d) of the Petition. Mr.Acharya makes a request that a liberty be reserved to the Petitioners to raise Original Application concerning these submissions and to make a prayer similar to the one in prayer clause (d) through that Original Application. Mr.Vanarse appearing for the State Government leaves it to the Court to pass appropriate order. In the circumstances, though we are dismissing this Writ Petition, as far as prayer clause (d), it will be open to the Petitioners to file a separate Original Application in the Administrative Tribunal by raising specific pleadings. Since this prayer is made in this petition which took some time to be decided and since petitioners are being relegated to MAT for agitating this prayer, we expect MAT to decide it on merits. Petition dismissed.

(H.L. GOKHALE, J.)

(SMT.NISHITA MHATRE J.)